

THOMAS R. FRAZIER  
JONATHAN M. BROWN

IBLA 87-368

Decided December 8, 1988

Appeal from a decision of the Eastern States Office, Bureau of Land Management, denying prospecting permit applications ES 36661, ES 36662, and ES 36663.

Affirmed as modified.

1. Mineral Lands: Prospecting Permits

The Department of the Interior has no authority to issue permits or leases for the exploration or mining of hardrock minerals in land acquired by and held under the jurisdiction of the Department of the Army.

APPEARANCES: Thomas R. Frazier and Jonathan M. Brown, pro sese, Marietta, Georgia.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Thomas R. Frazier and Jonathan M. Brown have appealed a decision by the Eastern States Office, Bureau of Land Management (BLM), rejecting prospecting permit applications ES 36661, ES 36662, and ES 36663. These applications were submitted on November 20, 1986, and sought the right to prospect for placer gold on lands in Cherokee and Hall Counties, Georgia, acquired by and held under the jurisdiction of the Corps of Engineers, Department of the Army.

In its February 27, 1987, decision rejecting appellants' applications, BLM stated, "Prospecting permits for solid hardrock minerals may only be leased for those lands acquired by the Department of Agriculture (43 CFR 3560.3-1). Therefore, since the lands in your applications were not acquired by the Department of Agriculture, ES 36661, ES 36662 and ES 36663 must be and are hereby rejected" (BLM Decision at 1).

Appellants argue that the regulation cited by BLM, 43 CFR 3560.3-1, applies to leasable materials, not hardrock minerals, and does not support rejection of the applications. Further, they assert that BLM has established a "precedent" by issuing prospecting permits for hardrock minerals

"on lands administered by the U.S. Fish and Wildlife Service [FWS], and perhaps other agencies" (Appellants' Statement of Reasons at 1). 1/

Appellants' assertion that 43 CFR 3560.3-1 is applicable only to leasable materials is without foundation. That section applies specifically to hardrock minerals. There is no basis for appellants' interpretation to the contrary.

[1] The regulations at 43 CFR 3560.3 list certain lands 2/ which are subject to hardrock mineral leasing 3/ by the Secretary of the Interior. They contain no provision for such leasing of lands acquired by and under the jurisdiction of the Department of the Army. Furthermore, the statutory authority for leasing and otherwise disposing of hardrock minerals, listed at 43 CFR 3500.0-3(b) and (c), fails to reveal a statute giving BLM authority to grant hardrock mineral leases on Department of the Army lands. The Reorganization Plan No. 3 of July 16, 1946, 5 U.S.C. Appendix, cited by appellants as the authority which BLM utilized in issuing hardrock prospecting permits on lands administered by the FWS, transferred to BLM authority to grant hardrock mineral leases for certain lands acquired by the Department of Agriculture. That plan has no applicability to lands acquired by FWS or the Department of the Army. Moreover, even if appellants had shown that BLM had issued prospecting permits in the past without proper authorization, that fact would not affect the outcome of this appeal, since "[f]ailure to apply the appropriate regulations in prior years is not authority to further disregard those regulations." Jimmie & Leona Ferrara, 47 IBLA 335, 341 (1980); see Charles Stewart, 26 IBLA 160, 162 (1976); Mary Nan Spear, 25 IBLA 34, 35-36 (1976).

Prior decisions by this Board support the conclusion that BLM has no authority to grant hardrock mineral prospecting permits on lands acquired by the Department of the Army. George S. Crawford, 75 IBLA 290, 291 (1983); Dresser Industries, Inc., 9 IBLA 58, 59 (1973). Accordingly, we find that BLM properly rejected appellants' hardrock mineral prospecting permit applications for lack of authority to issue permits on the described lands.

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1/ Appellants also request that BLM provide certain information relating to prospecting permits granted by BLM and request additional time to comment thereon following receipt of that material. As further factual information and arguments based thereon would not be dispositive of this matter, appellants' request for an extension of time is denied.

2/ The regulations at 43 CFR 3560.3-2 through 3560.3-4 describe certain lands which are not Department of Agriculture lands but which are subject to hardrock mineral leasing by the Secretary of the Interior. Thus, the statement in BLM's decision that it may grant hardrock leases only on lands acquired by the Department of Agriculture is incorrect.

3/ The regulation at 43 CFR 3562.1 provides, "A prospecting permit may be issued for any area of available public domain and acquired lands subject to hardrock mineral leasing where prospecting or exploratory work is necessary to determine the existence or workability of a particular hardrock mineral(s)." Thus, a prospecting permit may only be issued for lands which are open to hardrock mineral leasing under 43 CFR 3560.3.

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Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Bruce R. Harris

Administrative Judge

I concur:

C. Randall Grant, Jr.  
Administrative Judge

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